

05-621 NOV - 7 2005

No. OFFICE OF THE CLERK

In The
Supreme Court of the United States

JACKSON RIP HOLMES,

Petitioner,

v.

VANDE MITZI SLACK AND JEANETTE KRISTINA
POSLER, as co-personal representatives of the
Estate of Jeanette VanDevere Holmes,

Respondents.

**On Petition For A Writ Of Certiorari
To The Oregon Court Of Appeals**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether the petitioner was deprived of his Fifth Amendment right, not to be deprived of property, without due process of law, when the lower court refused to allow petitioner discovery of documents needed to prove embezzlement – by personal representatives of estate – of petitioner's inheritance, under circumstances where significant proof of the conversion was already admitted into evidence before the lower court.

II.

Whether the petitioner was deprived of his Fifth Amendment right, not to be deprived of property, without due process of law, when the lower court refused to allow petitioner discovery of documents, needed to prove good faith complaint, over conversion of petitioner's inheritance by co-personal representatives of estate – under circumstances where significant proof of the conversion was already admitted into evidence before the lower court – and instead imposed an assessment of \$47,000 in attorney fees award against petitioner, for filing claim which "had no objectively reasonable basis".

LIST OF PARTIES

The parties are Jackson Rip Holmes, petitioner, devisee of the Jeanette VanDevere Holmes Estate, and Vande Mitzi Slack and Jeanette Kristina Posler, respondents, devisees, and co-personal representatives, of the Jeanette VanDevere Holmes Estate.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jackson Rip Holmes respectfully prays that a writ of *certiorari* issue to review the judgment below.

OPINION BELOW

The "Order Denying Review" of the Oregon Supreme Court appears as Appendix C. The "Affirmed Without Opinion" Order of the Oregon Court of Appeals appears as Appendix A. The Orders and Judgment of the Lane County Circuit Court, Probate Department, Eugene, Oregon, appear as Appendix B.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Title 28 U.S.C. § 1257, subsection (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution provides:

"No person shall be . . . be deprived of life, liberty, or property, without due process of law; . . ."

The Fourteenth Amendment of the United States Constitution provides:

"Section 1. . . . No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . ."

STATEMENT OF THE CASE AND FACTS

This is an appeal from a probate proceeding in Lane County, Oregon.

Petitioner is the son of the decedent, Jeanette V. Holmes, who died on December 2, 2000. The respondents, who are the sisters of the appellant, are the co-personal representatives of the decedent's estate. Under decedent's Will most of her property went into a trust of which appellant and the respondents are the principal, and equal beneficiaries.

Petitioner was subjected to separate, non-estate, private, litigation, in Florida, in January, 2001, by the co-personal representatives, and learned through their Florida attorney's letter to the Florida Bar – Appendix D – that the attorney was being paid by petitioner's sisters with money earlier sent him by petitioner's mother, the decedent, for decedent's representation.

Petitioner filed a complaint about this with the Lane County, Oregon, Probate Court, along with a will contest, and a separate claim against the decedent's estate.

A trial was conducted about these matters in July, 2001, during which time petitioner introduced the respondents' – petitioner's sisters', co-personal representatives' – Florida lawyer's, letter to the Florida Bar admitting he and respondents agreed to use the decedent's money to

help the respondents – the petitioner's sisters, the Oregon estate's co-personal representatives – file private litigation against the petitioner in Florida. Petitioner testified respondents, through their private, Florida litigation, sought to wrongfully take Florida property belonging to him worth \$400,000.

Respondent Vande Mitzi Slack testified she had timely paid the Florida lawyer herself, and knew nothing of the decedent's money being used to fund her litigation against petitioner in Florida. Petitioner sought discovery of any and all records of such alleged payments, and alleged to the probate court that respondent Slack's testimony, contradicting Florida lawyer's written statement to the Florida Bar – Appendix D – was dishonest.

The Lane County, Oregon, Probate Court denied the petitioner access to the dispositive evidence – existence of necessary records of such alleged interstate payments by the respondent, to the Florida lawyer, contradicting his statement he was paid with decedent's/Estate's funds – , ruled that the respondents had done nothing wrong, and awarded attorney fees to them, against the petitioner, of \$47,000. Appendix B.

Respondent asserted this denial of access to evidence to prove perjury and conversion of estate assets by the respondents, to pay their Florida attorney to try to wrongfully take petitioner's \$400,000 Florida property away from him, violated his U.S. Constitutional right not to be deprived of property:

- his 1/3 interest in the decedent's/estate's funds held by the Florida lawyer,
- the \$47,000 attorney fee award,

- as well as ongoing efforts by the respondents to wrongfully take his Florida, and Oregon estate, property

without due process of law. Appendix D.

During the pendency of the probate case – Case No. 50-00-23921 – petitioner's attorney filed a motion for relief from judgment with the probate court, again seeking deposition and production of documents, relating to the foregoing decedent's retainer held by the Florida lawyer. Petitioner again introduced into evidence the Florida lawyer's written statement to the Florida Bar, stating that such money was used by the respondents – petitioner's sisters, co-personal representatives – in their private, non-estate, capacity, to file litigation against the petitioner in Florida.

Petitioner's attorney alleged that respondent Slack, in stating she knew nothing of such use of decedent's funds to pay her bill in suing petitioner in Florida, and that she timely paid her own bills, committed perjury, and sought deposition and production of documents relating to any necessary interstate payments by her to the Florida attorney. The probate court, without explanation, stated that the decedent's unused retainer to the Florida attorney was not an estate asset, and denied deposition and discovery, despite the outstanding \$47,000 attorney fee judgment, and petitioner's allegation the denial of discovery violated his U.S. Fifth Amendment right not to be deprived of property without due process of law.

The Lane County, Oregon, Probate Court, in the same case, one year later denied \$45,000 in later attorney fees to respondents' Oregon attorney, after petitioner showed these fees were not related to the Oregon estate, but

rather were respondents' private legal bills from their attorneys to pay for their continuing litigation in Florida, against petitioner, seeking to wrongfully take petitioner's \$400,000 Florida property away from him. Appendix B.

Petitioner appealed to the Oregon Court of Appeals, which "Affirmed Without Opinion", on April 13, 2005. Appendix A.

Petitioner appealed to the Oregon Supreme Court, petitioning for a review of the Oregon Court of Appeals' decision. The Oregon Supreme Court denied review on August 9, 2005.

Petitioner now prays for review by This Honorable United States Supreme Court.

REASONS FOR GRANTING THE PETITION

[Apology for sub-standard Petition due to Hurricane Wilma; promise to hire U.S. Supreme Court Bar Member Attorney if Certiorari granted.]

The petitioner, due to unforeseen problems caused by Hurricane Wilma, affecting attorneys with whom petitioner was consulting to prepare this petition, apologizes to This Honorable Court for inadequate preparation of this Petition. Petitioner's attorney, as well as U.S. Supreme Court Bar Members in Miami (as well as the Federal Courts) were forced to close their offices for several days during the key phase of legal research and writing of this Petition.

The petitioner, who has consulted with Florida attorneys Octavio Mestre, Esquire, Cesar Sordo, Esquire, Oregon attorney George Kelly, Esquire, and Florida U.S.